



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 26, 1996

Ms. Kathryn A. Hansen
Assistant City Attorney
City of Fort Worth
1000 Throckmorton
Fort Worth, Texas 76102

OR96-0392

Dear Ms. Hansen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 36520.

The City of Fort Worth (the "city") received a request for the following information:

1. A copy of the city's pet license database in electronic form, preferably on 3.5 inch DOS disks in a dBase or ASCII delimited format. The information should include, but not be limited to name of owner, address, phone number, name of pet, license number, whether the animal has been spade or neutered, issue date and vaccination date.
2. A record layout, field description, and code sheet for all fields in the pet license database.

You claim that the requested information is excepted from required public disclosure by section 552.110 of the Government Code. You have submitted representative samples of the requested information to this office for review.¹

You assert that individual veterinarians have proprietary interests that are implicated by this request. Pursuant to section 552.305 of the Government Code, we

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

notified the president of the Tarrant County Veterinary Medical Association (the "association") of the request for information. We received a response submitted on behalf of the association. The association contends that the requested information is excepted from disclosure by section 552.110 of the Government Code because the information constitutes trade secrets of the individual veterinarians who provide the information to the city in compliance with the Veterinary Licensing Act, V.T.C.S., article 8890. We also received an affidavit from the office manager of a Tarrant County veterinary hospital.

Section 552.110 protects the property interests of private persons by excepting from required public disclosure two types of information: (1) trade secrets, and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex.), *cert. denied*, 358 U.S. 898 (1958); *see also* Open Records Decision No. 552 (1990) at 2. Section 757 provides that a trade secret is

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. *It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business* A trade secret is a process or device for continuous use in the operation of the business. . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939) (emphasis added).²

²The six factors that the Restatement gives as indicia of whether information constitutes a trade secret are

(1) the extent to which the information is known outside of [the company]; (2) the extent to which it is known by employees and others involved in [the company's] business; (3) the extent of measures taken by [the company] to guard the secrecy of the information; (4) the value of the information to [the company] and [its] competitors; (5) the amount of effort or money expended by [the company] in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision Nos. 319 (1982) at 2, 306 (1982) at 2, 255 (1980) at 2.

The documents submitted to us indicate that information supplied to the city by veterinarians is not widely known outside veterinarians' offices and that it would be extremely difficult to duplicate this information unless the city released it. In addition, the veterinarians advise us that release of the requested information would give competitors a substantial competitive advantage. The veterinarians further maintain that vaccination information is of value to veterinary practices because it is used to remind veterinarians and pet owners of impending vaccination deadlines. Finally, the veterinarians indicate that great effort and expense are involved in creating this information.³

We believe that the third party veterinarians have established a prima facie case that the requested information is a trade secret. Moreover, that demonstration is unrebutted as a matter of law. Accordingly, we conclude that you must withhold the requested information under section 552.110 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref.: ID# 36520

Enclosures: Submitted documents

³We note that you have cited section 18E(a) of the Veterinary Licensing Act, V.T.C.S. § 8890, which requires that veterinarians keep confidential information regarding the care of an animal "except on written authorization or another form of waiver executed by the client or on receipt by the veterinarian of an appropriate court order or subpoena." Section 18E(a) applies only to information in the custody of veterinarians; it does not apply to information regarding the care of an animal when the information is in the possession of a city. (We assume that section 18E authorizes a veterinarian to release the requested information to the city pursuant to city ordinance.) Section 18E(a) is helpful insofar as it supports the city's argument that the requested information constitutes trade secret information of the various veterinarians who submitted the information to the city. See RESTATEMENT OF TORTS § 757 cmt. b (listing indicia of trade secret information); *supra* note 1 (quoting RESTATEMENT OF TORTS § 757 cmt. b).

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